

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Adelphia Communications Corporation)	File No. EB-02-TS-555
)	
Operator of Cable Systems in the States of:)	
)	
Florida, Indiana, Kentucky, Massachusetts,)	
New Hampshire, North Carolina,)	
Ohio, Pennsylvania, Vermont,)	
Virginia, and West Virginia)	
)	
Request for Waiver of Section 11.11(a) of the)	
Commission's Rules)	

ORDER

Adopted: December 4, 2002**Released: December 5, 2002**

By the Chief, Technical and Public Safety Division, Enforcement Bureau:

1. In this *Order*, we grant Adelphia Communications Corporation ("Adelphia") temporary waivers to April 1, 2003 of Section 11.11(a) of the Commission's Rules ("Rules") for 65 cable television systems in the 11 above-captioned states and listed in Attachment A. Section 11.11(a) requires cable systems serving fewer than 10,000 subscribers from a headend to provide national level Emergency Alert System ("EAS") messages on all programmed channels by October 1, 2002, but allows cable systems serving fewer than 5,000 subscribers from a headend to either provide national level Emergency Alert System ("EAS") messages on all programmed channels or install EAS equipment and provide a video interrupt and audio alert on all programmed channels and EAS audio and video messages on at least one programmed channel by October 1, 2002.¹

2. The Cable Act of 1992 added new Section 624(g) to the Communications Act of 1934 ("Act"), which requires that cable systems be capable of providing EAS alerts to their subscribers.² In 1994, the Commission adopted rules requiring cable systems to participate in EAS.³ In 1997, the

¹ 47 C.F.R. § 11.11(a).

² Cable Television Consumer Protection and Competition Act of 1992, Pub. L. No. 102-385, § 16(b), 106 Stat. 1460, 1490 (1992). Section 624(g) provides that "each cable operator shall comply with such standards as the Commission shall prescribe to ensure that viewers of video programming on cable systems are afforded the same emergency information as is afforded by the emergency broadcasting system pursuant to Commission regulations" 47 U.S.C. § 544(g).

³ *Amendment of Part 73, Subpart G, of the Commission's Rules Regarding the Emergency Broadcast System, Report and Order and Further Notice of Proposed Rule Making*, FO Docket Nos. 91-171/91-301, 10 FCC Rcd 1786 (1994), *reconsideration granted in part, denied in part*, 10 FCC Rcd 11494 (1995).

Commission amended the EAS rules to provide financial relief for small cable systems.⁴ The Commission declined to exempt small cable systems from the EAS requirements, concluding that such an exemption would be inconsistent with the statutory mandate of Section 624(g).⁵ However, the Commission extended the deadline for cable systems serving fewer than 10,000 subscribers to begin complying with the EAS rules to October 1, 2002, and provided cable systems serving fewer than 5,000 subscribers the option of either providing national level EAS messages on all programmed channels or installing EAS equipment and providing a video interrupt and audio alert on all programmed channels and EAS audio and video messages on at least one programmed channel.⁶ In addition, the Commission stated that it would grant waivers of the EAS rules to small cable systems on a case-by-case basis upon a showing of financial hardship.⁷ The Commission indicated that waiver requests must contain at least the following information: (1) justification for the waiver, with reference to the particular rule sections for which a waiver is sought; (2) information about the financial status of the requesting entity, such as a balance sheet and income statement for the two previous years (audited, if possible); (3) the number of other entities that serve the requesting entity's coverage area and that have or are expected to install EAS equipment; and (4) the likelihood (such as proximity or frequency) of hazardous risks to the requesting entity's audience.⁸

3. On September 24, 2002, Adelphia filed a request for temporary, six-month waivers of Section 11.11(a) for 278 small cable systems in 16 states. In support of the waiver request, Adelphia states that the 278 cable systems each serve between 22 and 9,958 subscribers. Adelphia states that its normal course of business was disrupted by events leading up to and including its filing for Chapter 11 bankruptcy on June 25, 2002. Adelphia explains that the resignation and criminal indictment of three of its senior executives, the resignation of the majority of its Board of Directors, and the subsequent investigation initiated by the Securities and Exchange Commission precluded Adelphia from borrowing under its credit facilities, precipitating a liquidity crisis which ultimately resulted in its filing for bankruptcy. The bankruptcy filing prevented Adelphia from pursuing its planned installation schedule for EAS equipment. At the time of filing the request for waiver, Adelphia had arranged for funding from its debtor in possession for the purpose of meeting its EAS requirements. It is now engaged in an aggressive program of procuring and installing EAS equipment, but is unable, due primarily to funding delays caused by the bankruptcy, to meet the October 1, 2002 deadline. Adelphia indicates that it expects to have all of its systems in compliance with the EAS rules on or before April 1, 2003. In addition, Adelphia submits that its subscribers will continue to have ready access to national EAS information from other sources, including its cable systems. In this regard, Adelphia notes that all of its systems carry local off-the-air programming that includes EAS messages. Adelphia also asserts that its subscribers will have access to EAS information through over-the-air reception of broadcast television and radio stations. Finally, Adelphia offers to file monthly progress reports on the status of its EAS equipment installation efforts.

⁴ *Amendment of Part 73, Subpart G, of the Commission's Rules Regarding the Emergency Broadcast System, Second Report and Order*, FO Docket Nos. 91-171/91-301, 12 FCC Rcd 15503 (1997).

⁵ *Id.* at 15512-13.

⁶ *Id.* at 15516-15518.

⁷ *Id.* at 15513.

⁸ *Id.* at 15513, n. 59.

4. Between October 2, 2002 and November 11, 2002, Adelphia submitted supplemental information showing that a total of 213 systems for which it had initially requested waivers have been brought into compliance. With respect to the remaining 65 systems, Adelphia has committed to completing installation of EAS equipment at a minimum of 33 cable systems by the end of February 2003, and 32 cable systems by the end of March 2003. Based upon our review of the information submitted by Adelphia, we conclude that granting Adelphia temporary waivers of Section 11.11(a) of the Rules will serve the public interest by accommodating the objectives underlying the bankruptcy laws.⁹ Additionally, we find that the aggressive program of EAS equipment installation initiated by Adelphia immediately upon receipt of funding from its debtor in possession to be an appropriate and acceptable response to its financial crisis. Accordingly, we grant Adelphia temporary waivers of up to six months of Section 11.11(a) for the 65 remaining cable systems in Attachment A.¹⁰ As a condition of these waivers, Adelphia must install EAS equipment pursuant to the schedule set forth above. Adelphia must also file progress reports with the Commission every thirty days until completion of its installation program or until these temporary waivers expire, whichever occurs first. The initial report is due on January 1, 2003, with subsequent progress reports due on the first business day of each successive month during the waiver period. A final report is due on or before April 1, 2003.

5. Accordingly, **IT IS ORDERED** that, pursuant to Sections 0.111, 0.204(b) and 0.311 of the Rules,¹¹ Adelphia Communications Corporation **IS GRANTED** temporary waivers of Section 11.11(a) of the Rules as specified herein for the 65 cable television systems listed in Attachment A.

6. **IT IS FURTHER ORDERED** that Adelphia Communications Corporation submit monthly progress reports on its EAS equipment installation program with the Chief of the Technical and Public Safety Division, Enforcement Bureau.

7. **IT IS FURTHER ORDERED** that Adelphia Communications Corporation place a copy of this waiver in its systems files.

⁹ The Commission has recognized that, under its public interest mandate, it has an obligation to consider the national policy underlying other federal laws, such as the bankruptcy laws. *See San Diego Television, Inc., Debtor-in-Possession*, 11 FCC Rcd 14689, 14693 (1996); *see also La Rose v. FCC*, 494 F.2d 1145, 1146 n. 2 (D.C. Cir. 1974). As the Commission has noted, the objectives underlying the bankruptcy laws are three-fold: equality of distribution among creditors, a fresh start for debtors, and the efficient and economical administration of cases. *Fox Television Stations, Inc.*, 8 FCC Rcd 5341, 5344-45, *recon. denied*, 8 FCC Rcd 8744 (1993).

¹⁰ The waivers will extend up to six months, from October 1, 2002 until April 1, 2003. Adelphia also specifically requests waiver of the testing and monitoring requirements of the EAS rules for these systems. We clarify that the waivers we are granting also encompass the EAS testing and monitoring requirements.

¹¹ 47 C.F.R. §§ 0.111, 0.204(b) and 0.311.

8. **IT IS FURTHER ORDERED** that a copy of this *Order* shall be sent by Certified Mail Return Receipt Requested to counsel for Adelpia Communications Corporation, Stuart F. Feldstein, Esq., Fleishman and Walsh, L. L. P., 1400 Sixteenth Street, N.W., Washington, DC 20036.

FEDERAL COMMUNICATIONS COMMISSION

Joseph P. Casey
Chief, Technical and Public Safety Division
Enforcement Bureau

Attachment A

Adelphia Communications Corporation

Cable Systems:**Florida**

Archer, Florida
Citrus/Inverness, Florida
Dunnellon, Florida
Key Biscayne, Florida
Meadow Lakes MHP, Florida
Tampa, Florida
Trenton, Florida
West Palm Beach (Comcast), Florida

Indiana

Elizabeth, Indiana

Kentucky

Cloverport, Kentucky
Cromwell, Kentucky
Maloneton, Kentucky
Nelson, Kentucky
Sandy Hook, Kentucky

Massachusetts

Martha's Vineyard, Massachusetts

New Hampshire

Claremont, New Hampshire
Moultonborough, New Hampshire

North Carolina

Bailey, North Carolina
Elkin, North Carolina
Fountain, North Carolina
Halifax, North Carolina
Hollister, North Carolina
Lake Gaston, North Carolina
Laurinburg, North Carolina
Mid Lakes, North Carolina
Oak City, North Carolina
Pine Topps, North Carolina
Whitakers, North Carolina

Ohio

Amsterdam, Ohio
Ashley Corner, Ohio
Cadiz, Ohio
Compton Hills MHP, Ohio
Coshocton, Ohio
Crown City, Ohio
Eagles Lake MHP, Ohio
Eureka, Ohio
Freeport Twp., Ohio
Green Lawn MHP, Ohio
Hopedale, Ohio
Jewett, Ohio
Leesville, Ohio
Minerva, Ohio
Pedro, Ohio
Put-n-Bay, Ohio
Riverside, Ohio
Salineville, Ohio
Scio, Ohio
Sebring, Ohio

Pennsylvania

Cresson, Pennsylvania
Houtzdale OTN, Pennsylvania
Lewistown, Pennsylvania
Mt. Union, Pennsylvania
Philipsburg, Pennsylvania
Rochester, Pennsylvania
South Fork, Pennsylvania
Towanda, Pennsylvania

Vermont

Bennington, Vermont

Virginia

Culpeper, Virginia
Gordonsville, Virginia
Green Co, Virginia
Hot Spring, Virginia
Palmyra, Virginia
Troutville Hub #1 (Blue Ridge), Virginia

West Virginia

Apple Grove, West Virginia
Graysville, West Virginia
Sandyville, West Virginia